

Under the Retailers' Occupation Tax Act, the manufacturing machinery and equipment exemption extends to machinery and equipment that is used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See 86 Ill. Adm. Code 130.330. (This is a GIL).

June 21, 2000

Dear Xxxxx

This letter is in response to your letter dated March 20, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

This letter is in regards to the proper application of the sales/use tax statute as it pertains to the purchase of flux used within the manufacturing process and the recycling of flux byproducts i.e. slag and dust. COMPANY is a manufacturer of industrial tanks. COMPANY would like to respectfully request a private letter ruling concerning the taxability of flux as it is used in a production capacity.

**Taxability Ruling: Flux**

COMPANY uses flux in a welding capacity. Active Flux is the product utilized in the performance of this production process. By definition, an 'Active Flux' chemically reacts with the molten weld metal to enhance the mechanical properties of the filler metal. The chemicals responsible for these mechanical properties become a permanent part of the tank.

**Taxability Ruling: Recycling Flux Byproducts**

COMPANY utilizes 'flux recovery' units to recycle usable flux that is decomposed into byproducts in the form of slag and dust. By recycling these byproducts, the volume of discarded waste is reduced. This directly decreases the amount of waste that is shipped to area landfills. The byproduct therefore is shipped to firms that regrind the waste into flux. The recycled product upon repurchase only contains 20% new flux.

- 1) What is the taxability of what is termed 'active flux' within the production process?

- 2) What is the taxability of the flux recovery units?
- 3) What is the taxability of the recycled byproduct? If taxable, at what percentage? (since it is comprised of only 20% new product)

Your response will assist COMPANY in making proper taxability decisions as it concerns sales and use tax. Should you have any questions or concerns, please contact me at ####. Your cooperation is greatly appreciated.

The Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq. (1998 State Bar Edition), imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The State rate of tax under the Retailers' Occupation Tax Act is 6.25% plus applicable local taxes.

Under the Retailers' Occupation Tax Act, the manufacturing machinery and equipment exemption extends to machinery and equipment that is used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See the enclosed copy of 86 Ill. Adm. Code 130.330. The manufacturing process is the production of any article of tangible personal property, whether such article is a finished product or an article for use in the process of manufacturing or assembling a different article of tangible personal property, by procedures commonly regarded as manufacturing, processing, fabricating, or refining that changes some existing material or materials into a material with a different form, use, or name. These changes must result from the process in question and be substantial and significant. The manufacturing machinery and equipment exemption also extends to repair and replacement parts as long as the parts are incorporated into machinery and equipment that is exempt under the regulation.

As you can see from the regulation, hand tools do not qualify for the exemption afforded manufacturing machinery and equipment. Hand tools include, but are not limited to, wrenches, pliers, hammers, chisels, sanding blocks, and screwdrivers. However, pneumatic hand tools or electric powered hand tools used primarily in manufacturing or assembling qualify for the exemption.

Please note that the exemption does not extend to supplies. Consumable supplies used in a manufacturing process are subject to tax. For example, welding flux is considered to be a consumable manufacturing supply and is fully taxable. However, to the extent that flux physically becomes a physical part of the product being manufactured for sale, it can be purchased for resale. Also, please note that the resale exemption applies to items which, although purchased for use, are resold as an ingredient of an intentionally produced product or byproduct of manufacturing. Therefore, if the reclaimed flux is an intentional byproduct of manufacturing, then it can be purchased for resale.

June 21, 2000

There is no exemption under Illinois law specifically for the use of tangible personal property in recycling operations. Please be advised that Section 3 of the Illinois Use Tax Act (35 ILCS 105/3) imposes a tax upon the privilege of using tangible personal property in Illinois purchased at retail from retailers. Retailers incur Retailers' Occupation Tax liability upon their gross receipts from sales of tangible personal property for use in this State. The definition of use generally includes the purchase and utilization of assets and supplies used by persons engaged in recycling operations. Therefore, sales of items used in recycling operations are generally taxable, unless an exemption can be documented.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk

Enc.